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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5801 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VADILAL MANILAL THAKER

Versus

DR.H.S.SHAH, OR HIS SUCCESSOR IN OFFICE, SUPERINTENEDERNT,

Appearance:

1. Special Civil Application No. 5801 of 1987
MR SHALIN MEHTA for M/S NJ MEHTA ASSO. for
Petitioner No. 1-6
MR S TRIPATHY for Respondent No. 1
MR HS MUNSHAW for Respondent No. 1,2
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/09/2004

ORAL JUDGEMENT

In this petition, the petitioners have primarily
prayed for being granted the pay-scale of Rs. 950-1500

as that of the Attendants from the date the petitioners first joined the Injection Department as per the details given at Annexure "A".

2. The foundation for the above claim of the petitioners is that according to the petitioners they were engaged by the respondents in the Sheth Vadilal Sarabhai Hospital as Ward boys. except for the petitioner No.6, who was employed as a Sweeper. It is not in dispute that the pay-scale of Ward boys was Rs. 750-940 at the relevant time. The case of the petitioners is that though they were engaged as Ward boys, the respondents used to assign the work to the petitioners as that of Attendants in the Injection Department. It is not in dispute that the pay-scale of Attendants at the relevant time was Rs. 950-1500. The petitioners therefore, on the basis of these averments, have contended that the respondents cannot deny to the petitioners the salary in the scale of Rs. 750-940, when they are actually doing the work of Attendants, for which post the pay-scale prescribed is that of Rs. 950-1500. The petitioners therefore, on the basis of the principles of equal pay for equal work, have prayed for being granted the pay-scale of Rs. 950-1500.

3. Though not specifically prayed for in the petition, a case was also made out on the basis of the averments in the petition that the respondents have resolved to pay Rs. 100/- per month by way of special pay to those of Class-IV employees who are discharging duties of technical nature, by resolution dated 27.2.1986. On the basis of this resolution, as an alternative prayer, the learned Counsel for the petitioners has prayed that in any event the petitioners would be entitled to the said special pay of Rs. 100/per month from the date of resolution till the petitioners actually discharged the duties of technical nature.

4. The respondents have filed an affidavit-in-reply and have opposed the petition. It is stated that the petitioners, except for petitioner No.6, were engaged as Ward boys, whereas the petitioner No.6 was engaged as Sweeper; that the duties performed by the petitioners in the Injection Department are not of technical nature or one which would entitle them to claim special pay. It was specifically averred that the petitioners were simply doing miscellaneous work of cleaning the bottles, counting the bottles and opening and closing the Department. It was therefore suggested that the petitioners are not entitled to the pay-scale of Rs. 950-1500, since they are not doing the work of

Attendants. It was also contended that the Resolution Annexure "E" dated 27.2.1986 is meant for those Class IV employees who are discharging duties of technical nature and since the petitioners are not doing such kind of work, even the special pay of Rs. 100/-per month is not available to them. It is further pointed out that from the cadre of Ward boy, next promotion is to the post of Senior Ward boy and thereafter to the post of Attendant

5. In the decision of M.P. Rural Agriculture Extension Officers Association Vs. State of M.P and another, reported in (2004) 4 SCC 646, the apex Court was pleased to observe that two different pay-scales can be provided in the same cadre on the basis of educational qualification, even if nature of work is the same and the posts are interchangeable. In the decision reported in (2003) 11 SCC 658 (Union of India Vs. Tarit Ranjan Das), the Hon'ble Supreme Court was pleased to observe that the principle of equal pay for equal work cannot be applied merely on the basis of designation or nature of work, and other relevant factors are also required to be taken into account.

6. Keeping the above judicial principles in mind, if one examines the facts of the present case, it is found that the petitioners have not proved that they were doing the work of Attendants in the hospital of the respondents. Even if the petitioners were discharging the same duties as that of the Attendants, their claim for equal pay for equal work would have had to be examined in light of other attending circumstances such as educational qualification, experience etc. In the present case, the petitioners have failed to establish that the nature of duties performed by them was same as that of the Attendants. Their claim for parity of pay-scale with that of the Attendants therefore cannot succeed. Even with respect to the question of special pay of Rs. 100/- per month, the respondents have clearly denied that the respondents were taking the work of technical nature from the petitioners. The details of the work performed by the petitioners have been given in the affidavit in reply. No rejoinder has been filed to the reply statement of the respondents, nor any further material is produced to establish that the statements made in the affidavit-in-reply are not correct. In that view of the matter, it is not possible for this Court to accept the suggestion of the petitioners that they were doing the work of technical nature and that therefore, pursuant to the Resolution dated 27.2.1986 they were entitled to receive Rs. 100/- per month by way of special pay. Thus, on both counts the petition fails and

is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas